



~~No. 83-932~~  
No. 83-1111

IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 1983

TEXAS INTERNATIONAL AIRLINES, INC.,

Petitioner,

v.

NATIONAL AIRLINES, INC.,

Respondent.

HEUBLEIN, INC.,

Petitioner,

v.

GENERAL CINEMA CORP.,

Respondent.

STATEMENT OF NATIONAL AIRLINES, INC.  
IN OPPOSITION TO THE MOTION OF HEUBLEIN,  
INC. FOR JOINT CONSIDERATION OF PETITIONS  
FOR WRITS OF CERTIORARI

National Airlines, Inc. ("National"), <sup>1/</sup> respondent in Texas International Airlines, Inc. v. National Airlines, Inc., No. 83-932, respectfully opposes Heublein, Inc.'s motion for an order providing for joint consideration of the petitions for writs of certiorari in Texas International and Heublein, Inc. v. General Cinema Corp., No. 83-1111.

Texas International filed its petition, seeking review of a judgment of the United States Court of Appeals for the Fifth Circuit, on December 6, 1983. Heublein filed its petition, seeking review of a judgment of the United States Court of

<sup>1/</sup> National Airlines was merged into Pan American World Airways, Inc. A list of the subsidiaries and affiliates of Pan American may be found in National's Brief in Opposition to Texas International's petition for a writ of certiorari.

Appeals for the Second Circuit, on January 6, 1984.

In opposition to the motion, National states as follows:

1. Both petitions admittedly involve Section 16(b) of the Securities Exchange Act of 1934 and question the interpretation by two Circuit Courts of this Court's decision in Kern County Land Co. v. Occidental Petroleum Corp., 411 U.S. 582 (1973). Beyond that, however, the petitions do not present issues that are sufficiently related to warrant their joint consideration. Heublein involved a forced exchange of stock-for-stock pursuant to a merger, an "unorthodox transaction" under Kern County, that the Second Circuit held not to be a Section 16(b) "sale." Texas International, on the other hand, involved a voluntary stock-for-cash transaction which, consistent with the holding in Kern County, the Fifth Circuit Court found to be a Section 16(b) "sale."

2. Given this critical factual distinction between the transactions at issue in the two petitions, there is nothing incongruous about the Circuit Courts' reaching different decisions on the liability issues. To the contrary, these decisions adequately demonstrate that the scope of the exception to Section 16(b) liability approved by this Court in Kern County was clearly understood and observed by both Circuit Courts. In this context, that the transactions in both cases arose out of corporate control contests where no tender offer was made is of no moment. As is pertinent to Texas International, the climate in which Texas International elected to dispose of its National stock does not alter the fact that its sale was voluntary and thus not within the narrow exception this Court established.

3. Accordingly, Heublein's petition bears little on the merits of Texas International's position or the correctness of the Fifth Circuit's decision. Because of fundamental factual differences between the two cases, joint consideration of them

will not materially assist this Court in determining whether either is worthy of review.

4. Joint consideration, however, will likely lead to further delay in the ultimate resolution of Texas International, to the financial detriment of National. Texas International's petition, filed on December 6, 1983 and timely opposed by National on January 6, 1984, is mature and ready for consideration by this Court. Heublein's petition, however, was not filed until January 6, and the respondent in that case will not be obliged to address that petition until early February. Thus, Heublein's petition will not be ripe for consideration by this Court for several weeks, at the earliest. Since this Court's review of Texas International's petition will not be significantly facilitated by considering it jointly with the Heublein petition, postponing the deliberations on Texas International's petition is unwarranted.

For the foregoing reasons, Heublein's motion for joint consideration should be denied.

Respectfully submitted,

*Martin S. Thaler*

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Dated: January 18, 1984

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this 18th day of January, 1984, served this Statement In Opposition to Heublein, Inc.'s Motion for Joint Consideration upon counsel of record for petitioner in Texas International, Inc. v. National Airlines, Inc. (No. 83-932), and upon counsel of record for petitioner and respondent in Heublein, Inc. v. General Cinema Corp. (No. 83-1111) by depositing a copy of each in the United States mail, postage prepaid and addressed as follows:

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I further certify that all parties required to be served have been served.

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